

ENTERED

May 04, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

RICHARD SCOTT SHAFER, *et al*,

Plaintiffs,

VS.

MICHAEL RUTLEDGE, *et al*,

Defendants.

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CIVIL ACTION NO. 2:21-CV-040

ORDER ADOPTING MEMORANDA AND RECOMMENDATIONS

Plaintiffs Richard Scott Shafer and Thomas Twiss filed this lawsuit as a putative class action on behalf of certain inmates incarcerated in the Texas Department of Criminal Justice (TDCJ) for violation of their right to exercise their religions under the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA). Pending before the Court are two Memoranda and Recommendations (M&Rs) issued by United States Magistrate Judge Julie K. Hampton:

1. The first M&R (D.E. 12), issued March 18, 2021, recommends denial of the motion for class certification (D.E. 6) and dismissal without prejudice of Plaintiff Twiss so that he may file his own action.
2. The second M&R (D.E. 19), issued April 22, 2021, recommends denial of Plaintiff Shafer's application to proceed in forma pauperis (D.E. 3) and dismissal without prejudice for failure to timely pay the filing fee within twenty (20) days as required by the Magistrate Judge's Order (D.E. 11), issued March 17, 2021.

Plaintiff Twiss did not file objections. Plaintiff Shafer filed objections (D.E. 14) to the first M&R, claiming among other things that he (and Plaintiff Twiss) can adequately represent a class of prisoners of different—but similar—religious faiths. The Court does not agree. As stated by the Magistrate Judge, Plaintiffs failed to show that they can properly serve as representative parties in a class action consisting of prisoners from different faiths. Plaintiff Shafer's failure to comply with the court order to timely pay the filing fee, alone, demonstrates that he is incapable of adequately representing the class. The Court **OVERRULES** the objections.

Plaintiff Shafer also filed objections (D.E. 20) to the second M&R, asserting that he has done everything in his power to pay his filing fee and that the administrative complexities or incompetencies of the TDCJ are the only reasons it has not been paid. He further argues that the Court should provide him an additional notice of failure to pay the filing fee if the payment is not received by May 7, 2021. The Order (D.E. 11) required payment by April 6, 2021. Plaintiff Shafer can determine if his account has been debited in the amount of the filing fee, as he asserts that when he checked in March, it had not been debited. The objections, filed April 30, 2021, do not reflect an attempt to ascertain the status of a request for payment from his trust account since that time. Plaintiff Shafer's objections are **OVERRULED**.

Having reviewed the findings of fact, conclusions of law, and recommendations set forth in the Magistrate Judge's Memoranda and Recommendations, as well as Plaintiff Shafer's objections, and all other relevant documents in the record, and having made a de novo disposition of the portions of the Magistrate Judge's Memorandum and

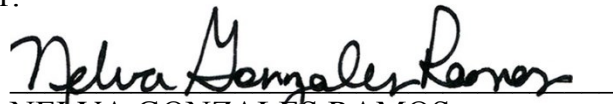
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Recommendation to which objections were specifically directed, the Court **OVERRULES** Plaintiff's objections and **ADOPTS** as its own the findings and conclusions of the Magistrate Judge. Accordingly, the Court:

- **DENIES** Plaintiffs' Motion to Certify Plaintiffs in a Class (D.E. 6);
- **DISMISSES WITHOUT PREJUDICE** the claims of Plaintiff Twiss;
- **DENIES** Plaintiff Shafer's application to proceed in forma pauperis (D.E. 3); and
- **DISMISSES WITHOUT PREJUDICE** Plaintiff Shafer's action for want of prosecution for failure to timely pay the filing fee.

This action is **DIMISSED WITHOUT PREJUDICE** in its entirety.

ORDERED this 4th day of May, 2021.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE